

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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FRANCHISE GROUP, INC., et al¹

Case No. 24-12480 (JTD)

(Jointly Administered)

Docket Ref. No. 435

Debtor.

**LIMITED OBJECTION AND RESERVATION
OF RIGHTS OF BRIERWOOD VILLAGE LLC TO MOTION OF DEBTORS
FOR ENTRY OF ORDER (A) APPROVING THE PRIVATE SALE OF CERTAIN
OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND
ENCUMBRANCES, WITH SUCH INTERESTS TO ATTACH TO THE
PROCEEDS, AND (B) GRANTING RELATED RELIEF**

Brierwood Village LLC ("Landlord") as party in interest in the above-captioned case and creditor of the above-captioned debtors and debtors-in-possession (the "Debtors"), by and through its undersigned attorney, submits the following objection and reservation of rights (the "Limited Objection") to the *Motion of Debtors for Entry of Order (A) Approving the Private Sale of Certain of Debtors' Assets Free and Clear of*

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are Franchise Group, Inc. (1876), Freedom VCM Holdings, LLC (1225), Freedom VCM Interco Holdings, Inc. (2436), Freedom Receivables II, LLC (4066), Freedom VCM Receivables, Inc. (0028), Freedom VCM Interco, Inc. (3661), Freedom VCM, Inc. (3091), Franchise Group New Holdco, LLC (0444), American Freight FFO, LLC (5743), Franchise Group Acquisition TM, LLC (3068), Franchise Group Intermediate Holdco, LLC (1587), Franchise Group Intermediate L, LLC (9486), Franchise Group Newco Intermediate AF, LLC (8288), American Freight Group, LLC (2066), American Freight Holdings, LLC (8271), American Freight, LLC (5940), American Freight Management Company, LLC (1215), Franchise Group Intermediate S, LLC (5408), Franchise Group Newco S, LLC (1814), American Freight Franchising, LLC (1353), Home & Appliance Outlet, LLC (n/a), American Freight Outlet Stores, LLC (9573), American Freight Franchisor, LLC (2123), Franchise Group Intermediate B, LLC (7836), Buddy's Newco, LLC (5404), Buddy's Franchising and Licensing LLC (9968), Franchise Group Intermediate V, LLC (5958), Franchise Group Newco V, LLC (9746), Franchise Group Intermediate BHF, LLC (8260); Franchise Group Newco BHF, LLC (4123); Valor Acquisition, LLC (3490), Vitamin Shoppe Industries LLC (3785), Vitamin Shoppe Global, LLC (1168), Vitamin Shoppe Mariner, LLC (6298), Vitamin Shoppe Procurement Services, LLC (8021), Vitamin Shoppe Franchising, LLC (8271), Vitamin Shoppe Florida, LLC (6590), Betancourt Sports Nutrition, LLC (0470), Franchise Group Intermediate PSP, LLC (5965), Franchise Group Newco PSP, LLC (2323), PSP Midco, LLC (6507), Pet Supplies "Plus", LLC (5852), PSP Group, LLC (5944), PSP Service Newco, LLC (6414), WNW Franchising, LLC (9398), WNW Stores, LLC (n/a), PSP Stores, LLC (9049), PSP Franchising, LLC (4978), PSP Subco, LLC (6489), PSP Distribution, LLC (5242), Franchise Group Intermediate SL, LLC (2695), Franchise Group Newco SL, LLC (7697), and Educate, Inc. (5722). The Debtors' headquarters is located at 109 Innovation Court, Suite J, Delaware, Ohio 43015.

Liens, Claims, and Encumbrances, with Such Interests to Attach to the Proceeds, and (B) Granting Related Relief [Docket No. 435] (the “Sale Motion”). In support of the Limited Objection, Landlord respectfully represents as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. On November 3, 2024, the Debtors commenced these chapter 11 cases by filing petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101–1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware.

2. This is a contested matter pursuant to Bankruptcy Rules 6006(b) and 9014.

3. Jurisdiction is based upon 28 U.S.C. §1334.

4. This is a core proceeding within the meaning of 28 U.S.C. §157(b).

5. The Debtors continue to manage and operate their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On November 19, 2024, the Office of the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors [Docket No. 188].

7. Landlord, as landlord, and Debtor American Freight, LLC, as tenant (in its capacity as such, the “Tenant”), are parties to that certain lease dated August 8, 2017 (the “Lease”) for the lease of certain store premises containing approximately 24,450 square feet (as more fully described in the Lease, the “Premises”) located at 8661 Old Kings Road South, Jacksonville, Duval County, Florida. Section 1.1 of the Lease states that the Premises are “part of the shopping center commonly known as Brierwood Village Plaza (the “Shopping Center”).

8. The Lease is an unexpired lease of nonresidential real property.

9. The Lease requires the Tenant to make payments of base and additional rent including fixed operating expenses and taxes (collectively, “Rent”).

10. Subject to certain limited exceptions, the Lease also requires the Tenant to, at its expense, maintain, repair, and replace in good working order all areas, improvements

and systems exclusively serving the Premises, including the Tenant HVAC (as defined in the Lease) and related components.

11. On December 13, 2024, the Debtors filed the Sale Motion, seeking approval of the private sale of certain of the Debtors' assets (the "Assets"), including leases to be assumed and assigned, to AF Newco I, LLC ("Purchaser").

12. The Debtors attached, as Exhibit 1 to the Sale Motion, a schedule of unexpired nonresidential leases along with the proposed cure amount for each such lease (the "Assumed Lease Schedule"). The Assumed Lease Schedule identifies the Lease as an unexpired lease that the Tenant may potentially assume and assign to Purchaser. The Assumed Lease Schedule sets forth a proposed cure amount for the Lease of \$1,393.41.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

13. Landlord has two specific objections to the sale and assignment of its particular Lease. First, the stated cure amount that must be paid as a condition precedent to the Tenant's assumption and assignment of the Lease is incorrect. Second, Landlord is in doubt as to whether the proposed Purchaser can provide adequate assurance of future performance as defined in 11 USC § 365(b)(3)(A-D) of the Bankruptcy Code. This section specifically defines adequate assurance of future performance in regards to a lease of premises in a shopping center as follows:

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially.

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

11 U.S.C. § 365(b)(3)(A-D)

A. The Proposed Cure Amount Fails to Provide for the Payment of All Obligations Due Under the Lease.

14. As of the date hereof, Debtor American Freight, LLC owes a total of \$5,390.02 for rent and sales tax. A copy of the tenant ledger containing the details comprising this amount is attached hereto as “Exhibit 1.”

15. Landlord also objects, in part, to the assumption of the Lease as Debtors must take the Lease subject to any charges accrued, but not yet billed, including, but not limited to, common area maintenance, real estate taxes, utilities, overage rent or percent rent. Landlord further reserves the right to supplement this Limited Objection prior to any final determination by the Court regarding assumption of the Lease, including the amount and payment required for purposes of cure under Section 365, as rent and other charges continue to accrue.

B. The Debtors or the Purchaser Must Provide Landlord with Adequate Assurance of Future Performance Under the Lease.

16. Pursuant to section 365(f)(2) of the Bankruptcy Code, a trustee or debtor-in-possession may assign an unexpired lease of the debtor only if:

A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2)

17. At the time of the execution of the Lease, American Freight had been operating for 23 years. At the time of the filing of the petition, it had over 350 locations.

Upon information and belief, the proposed Purchaser is a newly formed entity with no operating history and no credit history.

18. As of the date of this filing, no adequate assurance information has been provided to Landlord regarding Purchaser, its financial condition, and/or its ability to perform all obligations under the Lease. Although flexibility is afforded to debtors to assume and assign leases generally, as of the time of this filing, the Debtors have not satisfied section 365(f)(2) of the Bankruptcy Code.

19. Landlord also requests that Purchaser enter into an amendment to the Lease that is to be assumed and assigned, that reflects the terms of the assumption and assignment and affirms Purchaser's obligation to perform and assume all the applicable terms, conditions, and obligations applicable to Purchaser under such lease, including, but not limited to, repair and maintenance and/or other surrender obligations at the conclusion of the Lease term.

RESERVATION OF RIGHTS

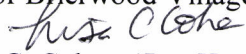
20. Landlord reserves the right to supplement or amend this Limited Objection based upon information acquired by Landlord subsequent to its filing, and to introduce evidence at any hearing related to the chapter 11 cases, the assumption and assignment of the Lease, and/or this Limited Objection. Landlord additionally reserves the right to exercise all available remedies under the Leases to obtain possession of the Premises (subject to any applicable procedural limitations imposed by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure), and to assert claims against the Debtors (including, but not limited to, administrative expense claims under sections 365(d)(3) and/or 503(b) of the Bankruptcy Code and claims arising from the rejection of the Lease should the Debtors later withdraw the proposed assumption or otherwise reject the Lease) at the appropriate time.

CONCLUSION

Landlord respectfully requests that any order granting approval of the Sale Motion be consistent with this Limited Objection and grant such other and further relief as is just and equitable.

Dated: January 3, 2025

RUFF & COHEN, P. A.
4010 Newberry Road, Suite G
Gainesville, Florida 32607
Telephone No. (352) 376-3601
Facsimile No. (352) 378-1261
Attorneys for Brierwood Village LLC


By: /s/ Lisa C. Cohen (*Pro Hac Vice* filed)
Lisa C. Cohen
Florida Bar No. 558291
lcohen@ruffcohen.com

"EXHIBIT 1"

Tenant Ledger

Tenant	American Freight, Inc.	Lease From Date	11/20/2017	Reference	160/freight/8661
Property	Brierwood Village Plaza	Lease To Date	12/31/2027	Email Address	invoices@consultasg.com
Unit	8661	Status	Current	Mobile Phone	
Rent	9678.13/month	Move In Date	11/20/2017	Office Phone	
Deposit		Move Out Date		Home Phone	

Date	Description	Charges	Payments	Balance
	Balance Forward			0.00
11/1/2024	Rent Taxable (11/2024)	9,678.13		9,678.13
11/1/2024	State Sales Tax for Rent Taxable (11/2024)	338.73		10,016.86
11/1/2024	Est RE Tax Taxable (11/2024)	2,030.00		12,046.86
11/1/2024	State Sales Tax for Est RE Tax Taxable (11/2024)	71.05		12,117.91
11/11/2024	:LateFee	585.41		12,703.32
11/27/2024	Chk# 304566 - Keybank		11,309.91	1,393.41
12/1/2024	Rent Taxable (12/2024)	9,678.13		11,071.54
12/1/2024	State Sales Tax for Rent Taxable (12/2024)	338.73		11,410.27
12/1/2024	Est RE Tax Taxable (12/2024)	2,030.00		13,440.27
12/1/2024	State Sales Tax for Est RE Tax Taxable (12/2024)	71.05		13,511.32
12/6/2024	Chk# 304774 - Keybank		12,117.91	1,393.41
12/12/2024	2024 RE Tax Reconciliation	3,861.46		5,254.87
12/12/2024	Sales Tax	135.15		5,390.02
1/1/2025	Rent Taxable (01/2025)	9,678.13		15,068.15
1/1/2025	State Sales Tax for Rent Taxable (01/2025)	338.73		15,406.88
1/1/2025	Est RE Tax Taxable (01/2025)	2,030.00		17,436.88
1/1/2025	State Sales Tax for Est RE Tax Taxable (01/2025)	71.05		17,507.93
1/3/2025	Chk# 305363 - Keybank		12,117.91	5,390.02
Current	30 Days	60 Days	Over 90	Current Owed
3,996.61	585.41	808.00	0.00	5,390.02

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 3, 2025, a true and correct copy of the foregoing has been furnished by **electronic mail only** to the foregoing:

Willkie Farr & Gallagher LLP 787 Seventh Avenue
New York, NY 10019
Debra M. Sinclair, Esq.
Betsy L. Feldman, Esq.
Matthew A. Feldman, Esq.
dsinclair@willkie.com
bfeldman@willkie.com
mfeldman@willkie.com

Young Conaway Stargatt & Taylor, LLP, Rodney Square
1000 North King Street Wilmington, DE 1980
Edmon L. Morton, Esq.
Matthew B. Lunn, Esq.
Allison S. Mielke, Esq.
emorton@ycst.co
mlunn@ycst.com
amielke@ycst.com

Timothy J. Fox, Esq.
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street
Suite 2207
Lockbox 35
Wilmington, DE 19801
timothy.fox@usdoj.gov

Gregg Bateman, Esq.
Sagar Patel, Esq.
Michael Danenberg, Esq.
Seward & Kissel LL
One Battery Park Plaza
New York, NY 10004
bateman@sewkis.com
patel@sewkis.com
danenberg@sewkis.com

Jayme Goldstein, Esq.
Jeremy Evans, Esq.
Isaac Sasson, Esq.
Paul Hastings LLP
200 Park Avenue
New York, NY 10166
jaymegoldstein@paulhastings.com
jeremyevans@paulhastings.com
isaacsasson@paulhastings.com

Adam G. Landis, Esq.
Matthew McGuire, Esq.
Landis Rath & Cobb LLP
919 N. Market Street Suite 1800
Wilmington, DE 19801
landis@lrclaw.com
mcguire@lrclaw.com

Jennifer Ezring, Esq.
James Ktsanes, Esq.
Andrew Sorkin, Esq.
Latham & Watkins LLP
1271 Avenue of the Americas New York
NY 10020
Jennifer.Ezring@lw.com
James.Ktsanes@lw.com
andrew.sorkin@lw.com


Thomas Lauria, Esq.
White & Case LLP
200 S Biscayne Blvd
Miami, FL 33131
tlauria@whitecase.com

Bojan Guzina, Esq.
White & Case LLP
111 S. Wacker Dr.
Suite 5100
Chicago, IL 60606
bojan.guzina@whitecase.com

Bradford J. Sandler, Esq.
Colin R. Robinson, Esq.
PACHULSKI STANG ZIEHL & JONES LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705
bsandler@pszjlaw.com
crobinson@pszjlaw.com

Robert J. Feinstein, Esq.
Alan J. Kornfeld, Esq.
Theodore S. Heckel, Esq.
PACHULSKI STANG ZIEHL & JONES LLP
780 Third Avenue, 34th Floor
New York, NY 10017
rfeinstein@pszjlaw.com
akornfeld@pszjlaw.com
theckel@pszjlaw.com

RUFF & COHEN, P. A.
4010 Newberry Road, Suite G
Gainesville, Florida 32607
Telephone No. (352) 376-3601
Facsimile No. (352) 378-1261
Attorneys for Brierwood Village LLC


By: /s/ Lisa C. Cohen (*Pro Hac Vice* and advisory
Lisa C. Cohen attorney forthcoming)
Florida Bar No. 558291
lcohen@ruffcohen.com

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NOTICE OF APPEARANCE

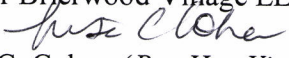
Lisa C. Cohen, of Ruff & Cohen, P.A., hereby gives this Notice of Appearance as attorney of record for Brierwood Village LLC, a creditor herein, and requests that copies of all notices, pleadings, and other papers filed in this case be

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furnished to the undersigned at the address shown below.

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RUFF & COHEN, P. A.
4010 Newberry Road, Suite G
Gainesville, Florida 32607
Telephone No. (352) 376-3601
Facsimile No. (352) 378-1261
Attorneys for Brierwood Village LLC


By: /s/ Lisa C. Cohen (*Pro Hac Vice* filed)
Lisa C. Cohen
Florida Bar No. 558291
lcohen@ruffcohen.com